

VALIDATION OF CERTAIN LAND CONVEYANCES IN RENO,
NEVADA AND TULARE, CALIFORNIA

—————
JULY 18, 1996.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

together with

DEMOCRATIC VIEWS

[To accompany H.R. 1784]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1784) to validate certain conveyances made by the Southern Pacific Transportation Company within the cities of Reno, Nevada, and Tulare, California, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. LEGALIZATION OF CERTAIN CONVEYANCES.

(a) IN GENERAL.—Notwithstanding any other provision of law, and subject to subsections (c) and (d), the following conveyances are hereby validated to the extent that the conveyances would have been legal or valid if all right, title, and interest of the United States had been held by the Southern Pacific Transportation Company at the time of such conveyances:

(1) Conveyances of parcels from the lands described in subsection (b) made by the Southern Pacific Transportation Company or its subsidiaries, predecessors, successors or assigns, on or before January 1, 1995.

(2) Conveyances of parcels from the lands described in subsection (b) made after January 1, 1995, by the Southern Pacific Transportation Company, or its successors or assigns, to the Redevelopment Agency of the city of Tulare or the Redevelopment Agency of the city of Reno.

(b) LANDS DESCRIBED.—The lands referred to in subsection (a) are the lands that—

(1) formed part of a railroad right-of-way granted to the Central Pacific Railroad Company of California or the Southern Pacific Railroad Company, or their successors or assigns, by the Federal Government; and

(2)(A) are located within the boundaries of the Downtown Redevelopment Area of the city of Reno, Nevada; or

(B) are located within the boundaries of Amended Urban Renewal Plan for California A-8-1 (the Downtown Plan) adopted by the city of Tulare.

(c) MINERALS.—(1) The United States hereby reserves any federally-owned minerals that may exist in land that is conveyed pursuant to this Act, including the right of the United States, and its assignees or lessees, to enter upon and utilize as much of the surface of such land as is necessary to remove minerals under the laws of the United States.

(2) Any and all minerals reserved by paragraph (1) are hereby withdrawn from all forms of entry, appropriation, and patent under the mining, mineral leasing, and geothermal leasing laws of the United States.

(d) TAKINGS OF PRIVATE LAND.—If the validation of any conveyance pursuant to subsection (a) would constitute a taking of the private property within the meaning of the Fifth Amendment to the United States Constitution, the validation of the conveyance shall be effective only upon payment by the Southern Pacific Transportation Company (or its subsidiaries, successors or assigns) to the Secretary of the Treasury of the fair market value of the property taken.

PURPOSE OF THE BILL

The purpose of H.R. 1784 is to validate certain conveyances made by the Southern Pacific Transportation Company within the cities of Reno, Nevada, and Tulare, California.

BACKGROUND AND NEED FOR LEGISLATION

From 1862 through 1871, Congress adopted the Pacific Railroad Acts (The Charter Acts) to establish a system of railroads in the western United States. The Charter Acts gave railroads a right-of-way to strips of land 200 feet wide on each side of the railroad tracks where the tracks were laid along routes established in the Charter Acts.

The right-of-way for the railroad tracks and a strip 200 feet wide on either side within the Downtown Redevelopment Area of the City of Reno and a strip 220 feet wide on either side within the Downtown Redevelopment Area of the City of Tulare (Railroad Right-of-Way) was granted to the Central Pacific Railroad Company of California and the Southern Pacific Railroad Company under the Charter Acts in 1862.

Currently, the railroad rights-of-way through Reno and Tulare are an active and essential part of the railroad corridor. There is only a remote possibility that the railroad tracks through downtown Reno and Tulare will ever be abandoned; however, that possibility means title to eight parcels of land is somewhat clouded and could be impaired or lost. Congressional action is the only relief to clear title to the eight parcels.

Under the bill, Congress corrects the problem by validating and confirming title to the eight parcels in accordance with 43 U.S.C. 912, with an act similar to Public Law 326 of the Sixty-Third Congress. In addition, on seven previous occasions Congress has validated similar conveyances under the same authority.

COMMITTEE ACTION

H.R. 1784 was introduced on June 7, 1995, by Congresswoman Barbara F. Vucanovich (R-NV) for herself and Congressman William M. Thomas (R-CA). The bill was originally referred to the

Committee on Transportation and Infrastructure. On July 11, 1995, that Committee was discharged and the bill was rereferred to the Committee on Resources, and within the Committee to the Subcommittee on National Parks, Forests and Lands. On July 20, 1995, the Subcommittee held a hearing on H.R. 1784, where Mrs. Vucanovich and Mr. Thomas testified in support of the bill. On October 17, 1995, the Subcommittee met to mark up H.R. 1784. No amendments were offered and the bill was ordered favorably reported to the Full Committee by voice vote. On November 15, 1995, the Full Resources Committee met to consider H.R. 1784. Congressman James V. Hansen (R-UT) offered an amendment in the nature of a substitute. To the amendment in the nature of a substitute, Congressman George Miller (D-CA) offered an amendment to require the railroad company to pay fair market value to the U.S. Treasury if it is shown that any conveyance by the company validated under the Act resulted in a private property taking under the Fifth Amendment of the U.S. Constitution; the amendment was adopted by voice vote. Congressman Miller then offered an amendment to require that fair market value be paid for the United States' interests that are conveyed by the Southern Pacific Transportation Company; the amendment failed on a recorded vote of 10-17, as follows:

COMMITTEE ON RESOURCES—104TH CONGRESS

ROLLCALL NO.1

Bill: H.R. 1784, Pacific Railroad Land Conveyance.
Amendment or matter voted on: Miller No. 2.

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Tauzin		X		Mr. Miller	X		
Mr. Hansen		X		Mr. Rahall			
Mr. Saxton		X		Mr. Vento			
Mr. Gallegly				Mr. Kildee	X		
Mr. Duncan				Mr. Williams	X		
Mr. Hefley				Mr. Gejdenson	X		
Mr. Doolittle		X		Mr. Richardson			
Mr. Allard				Mr. DeFazio	X		
Mr. Gilchrest				Mr. Faleomavaega			
Mr. Calvert		X		Mr. Johnson			
Mr. Pombo		X		Mr. Abercrombie			
Mr. Torkildsen		X		Mr. Studds			
Mr. Hayworth							
Mr. Cremeans		X		Mr. Ortiz			
Mr. Cubin		X		Mr. Pickett			
Mr. Cooley				Mr. Pallone	X		
Mrs. Chenoweth				Mr. Dooley		X	
Mrs. Smith		X		Mr. Romero-Barceló	X		
Mr. Radanovich		X		Mr. Hinchey	X		
Mr. Jones		X		Mr. Underwood			
Mr. Thornberry				Mr. Farr	X		
Mr. Hastings		X					
Mr. Metcalf		X					
Mr. Longley							
Mr. Shadegg		X					
Mr. Ensign		X					

Congressman Miller offered and withdrew an amendment to delete the prospective portion of the bill. The Hansen amendment in the nature of a substitute, as amended, was adopted by voice vote.

the bill, as amended, was then ordered favorably reported by a roll call vote of 17–10, as follows:

COMMITTEE ON RESOURCES—104TH CONGRESS

ROLLCALL NO. 2

Bill: H.R. 1784, Pacific Railroad Land Conveyance.
Amendment or matter voted on: Final passage.

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Tauzin	X	.....	.....	Mr. Miller .....	.....	X	.....
Mr. Hansen	X	.....	.....	Mr. Rahall .....	.....	.....	.....
Mr. Saxton	X	.....	.....	Mr. Vento .....	.....	.....	.....
Mr. Gallegly	X	.....	.....	Mr. Kildee .....	.....	X	.....
Mr. Duncan .....	.....	.....	.....	Mr. Williams .....	.....	.....	.....
Mr. Hefley	X	.....	.....	Mr. Gejdenson .....	.....	X	.....
Mr. Doolittle	X	.....	.....	Mr. Richardson .....	.....	.....	.....
Mr. Allard	X	.....	.....	Mr. DeFazio .....	.....	X	.....
Mr. Gilchrest .....	.....	.....	.....	Mr. Faleomavaega .....	.....	.....	.....
Mr. Calvert	X	.....	.....	Mr. Johnson .....	.....	X	.....
Mr. Pombo	X	.....	.....	Mr. Abercrombie .....	.....	X	.....
Mr. Torkildsen	X	.....	.....	Mr. Studds .....	.....	.....	.....
Mr. Hayworth .....	.....	.....	.....	.....	.....	.....	.....
Mr. Creameans .....	.....	.....	.....	Mr. Ortiz .....	.....	.....	.....
Mrs. Cubin	X	.....	.....	Mr. Pickett .....	.....	.....	.....
Mr. Cooley .....	.....	.....	.....	Mr. Pallone .....	.....	X	.....
Mrs. Chenoweth .....	.....	.....	.....	Mr. Dooley .....	.....	.....	.....
Mrs. Smith	X	.....	.....	Mr. Romero-Barceló .....	.....	X	.....
Mr. Radanovich	X	.....	.....	Mr. Hinchey .....	.....	X	.....
Mr. Jones	X	.....	.....	Mr. Underwood .....	.....	.....	.....
Mr. Thornberry .....	.....	.....	.....	Mr. Farr .....	.....	X	.....
Mr. Hastings	X	.....	.....	.....	.....	.....	.....
Mr. Metcalf	X	.....	.....	.....	.....	.....	.....
Mr. Longley .....	.....	.....	.....	.....	.....	.....	.....
Mr. Shadegg .....	.....	.....	.....	.....	.....	.....	.....
Mr. Ensign	X	.....	.....	.....	.....	.....	.....

SECTION-BY-SECTION ANALYSIS

Section 1. Legalization of certain conveyances

Certain land conveyances described in the bill and made by the Southern Pacific Transportation Company, or its subsidiaries, predecessors, successors or assigns, are validated.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 1784 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 1784. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 1784 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1784.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1784 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 6, 1995.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1784, a bill to validate certain conveyances made by the Southern Pacific Transportation Company within the cities of Reno, Nevada, and Tulare, California, and for other purposes, as ordered reported by the House Resources Committee on November 15, 1995. Enacting H.R. 1784 could affect direct spending if a taking of private property were later determined to result from any conveyances made pursuant to this bill. Therefore, pay-as-you-go procedures would apply to the bill. CBO cannot estimate the likelihood or the year-by-year magnitude of any budgetary effects that might result from enacting this bill, but we estimate that any such changes would net to zero over time.

H.R. 1784 would give the Southern Pacific Transportation Company the right to convey title to certain lands that form part of a railroad right-of-way previously granted by the federal government. Hence, the bill would validate land conveyances where the federal government owns the underlying title and the railroad controls the right-of-way. The bill would apply to both past and future conveyances.

Whether the federal government actually holds title to some of the lands within the railroad right-of-way not be certain, however. In some cases, the right to ownership should the easements lapse might revert to a third party. If a conveyance of any such lands results in a taking of private property, then the bill provides that such conveyances would be valid only if the Southern Pacific Transportation Company reimburses the government for the cost of any takings compensation.

Federal Budgetary Impact.—The bill would provide that if any conveyance validated by the bill is determined to be a taking of private land because of disputed ownership rights, then the Southern Pacific Transportation Company must pay the federal government the fair market value for that conveyance. The bill does not state how such funds are to be used, but if the federal government were required to compensate a third party for the fair market value of land under a takings decision, then this provision would likely have the effect of requiring the Southern Pacific Transportation Company to reimburse the federal government for the costs of such compensation. Although CBO cannot estimate the likelihood or magnitude of any such takings claims, the net budgetary impact over time should be zero because the bill would require that the railroad reimburse the federal government for any takings compensation.

Impact on State and Local Governments.—H.R. 1784 would apply to lands that lie within railroad rights of way in the cities of Tulare, California, and Reno, Nevada, and that were conveyed to any party before January 1, 1995, or are conveyed to the redevelopment agencies of these cities after that date. The bill would benefit the city of Tulare and Washoe County (which includes Reno) by clearing the title to parcels of land purchased by those governments. Both cities have plans to make additional purchases to further their redevelopment goals, but can only do so if Southern Pacific is able to make valid conveyances.

If you wish further details on this estimate, we will be pleased to provide them. The CBO contacts are Victoria V. Heid and, for state and local impacts, Marjorie Miller.

Sincerely,

JAMES L. BLUM
(For June E. O'Neil, Director).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 10, 1996.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has reviewed H.R. 1784, a bill to validate certain conveyances made by the Southern Pacific Transportation Company within the cities of Reno, Nevada, and Tulare, California, and for other purposes, as ordered reported by the House Committee on Resources on November 15, 1995. This letter conveys CBO's determination regarding intergovernmental and private-sector mandates in the bill.

Our estimate of the federal budgetary impact was transmitted to the committee on December 6, 1995.

H.R. 1784 contains no intergovernmental mandates as defined in Public Law 104-4 and would impose no costs on state, local, or tribal governments. H.R. 1784 would apply to lands that lie within railroad rights of way in the cities of Tulare, California, and Reno, Nevada, and that were conveyed to any party before January 1, 1995, or are conveyed to the redevelopment agencies of these cities after that date. The bill would benefit the city of Tulare and Washoe County (which includes Reno) by clearing the title to parcels of land purchased by those governments. Both cities have plans to make additional purchases to further their redevelopment goals, but can only do so if Southern Pacific is able to make valid conveyances.

CBO estimates that H.R. 1784 contains no private-sector mandates exceeding the annual threshold as defined in Public Law 104-4. H.R. 1784 could only impose private-sector mandates in the unlikely event that a private party claims ownership of the land to be conveyed and is successful in pressing that claim. In that case, the federal government would compensate the private party, Southern Pacific would be forced to reimburse the Treasury, and thus the railroad would bear the cost of the mandate.

If you wish further details on this estimate, we will be pleased to provide them. The CBO contacts are Majorie Miller for state and local impacts and Amy Downs for private-sector impacts.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 1784 contains no unfunded intergovernmental mandates or any private sector mandates over the threshold set by Public Law 104-4.

CHANGES IN EXISTING LAW

If enacted, H.R. 1784 would make no changes in existing law.

DEPARTMENTAL REPORTS

The Committee has received the following departmental report dated November 8, 1995, on H.R. 1784.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, November 8, 1995.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for the opportunity to provide the views of the Department of the Interior (DOI) on H.R. 1784, a bill to validate certain conveyances made by the Southern Pacific Transportation Company within the cities of Reno, Nevada and Tulare, California. A preliminary review of the facts and records available to the DOI reveals a very complex set of issues regarding

the ownership and title status of these lands. Many issues related to these conveyances cannot be resolved without a complete title search of Federal and State title records. We have, however, identified a number of problems with the bill and would oppose enactment of H.R. 1784 unless amended as suggested below.

BACKGROUND

The interest of the Southern Pacific Transportation Company (SPT) in the lands that are the subject of the bill originates from a right-of-way granted under the Pacific Railroads Act of July 1, 1862, ch. 120, 12 Stat. 489, as amended. Section 2 of the Act granted a 400 foot-wide right-of-way through the public lands of the United States “[F]or the construction of a railroad and a telegraph line.” In *Northern Pac. Ry. v. Townsend*, 190 U.S. 267, 271 (1903), the right-of-way grant was characterized as a limited fee made on an implied condition of reverter in the event that the railroad ceased to use the right-of-way for the purpose for which it was granted. Operationally, in the event that the railroad ceases use of the right-of-way, and a forfeiture is declared by the Congress or a judicial proceeding initiated by the Attorney General of the United States, the interest of the railroad is forfeited. In *United States v. Union Pacific Railroad Company*, 353 U.S. 112 (1957), the Supreme Court also determined that the grants made under Section 2 of the Act did not include a conveyance of the mineral rights.

Records of the Bureau of Land Management (BLM), Nevada State Office indicate that the lands which include the right-of-way were subsequently patented to third parties, which took title subject to the railroad’s limited fee.

The DOI maintains no records or information as to subsequent conveyances following the granting of the right-of-way and the issuance of patents.

H.R. 1784

The stated purpose of H.R. 1784 is to validate certain conveyances made by the SPT to third parties. Section 1(a) of the bill validates those conveyances to the extent that they would have been legal or valid if the land had been held by SPT under absolute fee-simple title. Section 1(a)(1) validates conveyances made by SPT for certain lands on or before January 1, 1995.

We assume that the intent of Congress is to relinquish whatever interest the United States now has in the subject lands. The language in Section 1(a) could be construed to do more. Confirming the conveyances as if the SPT has full fee title may interfere with the property rights of other parties who may claim an interest in the land. We therefore suggest that Section 1(a) be amended to read:

(a) IN GENERAL.—Notwithstanding any other provision of law, and subject to section 2, the following conveyances are hereby validated to the extent that the conveyances would have been legal or valid if all right, title or interest of the United States had been held by the Southern Pacific Transportation Company at the time of such conveyances:

In the alternative, the Congress could simply enact language that terminates the limitations on use as provided in the 1862 Act as to those lands that are the subject of the bill. This would act to terminate the possibility of reverter as well.

Section 1(a)(2) purports to validate conveyances prospectively after January 1, 1995. It is our understanding that the purpose of this bill is to protect and assist grantees of the SPT who were unaware of the limitations on use and reversionary interest of the United States. We have no objection to including any of those grantees in section 1(a) of the bill. However, any prospective conveyances would be made with full knowledge by the parties of the limitations on the railroad interest and we question why those conveyances would need to be protected under this bill.

Section 1(b) describes the lands referred to in subsection (a). Section 1(b)(2)(A) describes lands "located within the boundaries of the Downtown Redevelopment Area of the city of Reno, Nevada (as defined and determined by the Secretary of the Interior, in consultation with the appropriate official of the city of Reno, Nevada);" It is our understanding that the City of Reno, by ordinance, has established and defined its Downtown Redevelopment Area. We don't believe that it is appropriate for the Secretary of the Interior to become involved in defining and determining the boundaries of a city's redevelopment area when the city has already established it by ordinance. We suggest that this reference and the similar parenthetical reference in section 1(b)(2)(B) be deleted.

Section 2 requires the Secretary of the Interior to file for recordation in the County records of Tulare County, California, and Washoes County, Nevada, such instruments as are necessary to document the legal interests validated under section 1. We believe that this section establishes a bad precedent in that the United States does not pay for filing costs and record documents in County offices for the benefit of grantees. In the usual course of business, the grantee, as the benefited party, takes such action. Furthermore, this section is contrary to the long-standing requirement that the legal repository for records of conveyance documents issued by the Secretary of the Interior is the appropriate Bureau of Land Management office and not the County Recorder's Office. We believe that such action is unnecessary because the bill itself confirms conveyancing documents that already exist rather than creates new conveyances. Creation of new conveyancing documents might be confusing and contrary to the objectives of this bill.

Finally, we have noted over the years, a number of legislative initiatives to correct title problems that occur as a result of purchasers taking deeds from railroads, only to discover that the railroads have conveyed questionable titles. Congress enacted legislation in 1922 with this concern in mind. See 43 U.S.C. 912. The Congress recently recognized the value of railroad rights-of-way when it enacted Section 9 of the National Trails System Act (16 U.S.C. 1248). This statute provides for Federal ownership of abandoned or forfeited railroad rights-of-way. It, in part, supersedes the 1922 legislation. The pending bill does not take the policy of section 9 into account.

Therefore, if the Congress would like to provide for validation of conveyances in section 1(a) of the bill, and any future conveyances,

we recommend that the validation be subject to the payment by the railroad companies of fair market value for the United States' or other interests that are purportedly conveyed.

The continuing practice of railroad companies to purport to convey valid titles to purchases and then look to the Congress in order to validate such conveyances is contrary to the intent of the National Trails Systems Act, is contrary to the spirit of the acts which granted rights-of-way for railroad purposes only, and is inconsistent with the notion that the American people should realize fair market value for interests in publicly-owned land.

The Office of Management and Budget advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

BOB ARMSTRONG,
Assistant Secretary for Land and Minerals Management.

DEMOCRATIC VIEWS

There are several areas of concern with H.R. 1784.

The process used by the Committee during consideration of H.R. 1784 was unusual and yielded little information to Committee Members. A hearing was held by the Subcommittee on National Parks, Forests and Lands on July 20, 1995, yet no witnesses appeared to give testimony to the Subcommittee on the bill. Only the bill's sponsors, Reps. Vucanovich and Thomas, spoke on the bill. The Administration was not prepared to testify but subsequently submitted its views in opposition to the bill on November 8, 1995; however, the Subcommittee met and marked up the bill on October 17, 1995. The Resources Committee reported this bill on November 15, 1995.

The Committee considered this legislation without benefit of receiving input from the Southern Pacific Transportation Company; the affected cities of Reno, Nevada, or Tulare, California; those who paid Southern Pacific for the conveyances; adjacent landowners; or supporters of rails to trails programs. The lack of information was evident during the full committee markup of the bill where Members asked several questions and stated that it was not clear what specific land sites would be covered by the legislation.

Southern Pacific Transportation Company received an interest in the lands that are the subject of H.R. 1748 through a right-of-way granted under the Pacific Railroads Act of July 1, 1862, ch. 120, 12 Stat. 489, as amended. Section 2 of the Act granted a 400 foot-wide right-of-way through the public lands of the United States "For the construction of a railroad and telegraph line."

In *Northern Pac. Ry. v. Townsend*, 190 U.S. 267, 271 (1903), the right-of-way grant was characterized as a "limited fee made on an implied condition of reverter" in the event that the railroad ceased to use the right-of-way for the purpose for which it was granted. If the railroad ceases use of the right-of-way, and a forfeiture is declared by the Congress or a judicial proceeding initiated by the Attorney General of the United States, the railroad loses its interest in the land. In *United States v. Union Pacific Railroad Company*, 353 U.S. 112 (1957), the Supreme Court also determined that the grants made under Section 2 of the Act did not include a conveyance of the mineral rights.

Because the United States has a reversionary interest in railroad rights-of-way, the railroads exceed their ownership rights when they purport to transfer these properties to other entities for non-transportation uses. Congress has validated some such transfers in the past, but we are concerned that repeated validation of transfers will encourage railroads to sell property they do not entirely own, with the expectation that Congress will grant a post hoc validation of the transfer. Such transfers can be highly profitable; in this case the purchasers paid more than \$10 million for the property rights

transferred in Reno. Giving away the government's interest in these valuable properties clearly violates the taxpayers' interest in receiving fair market value for Federal property.

Under previous Congressional validations very small parcels of land had been conveyed to private landowners who had inadvertently encroached on the right-of-way land. Often the landowner was unaware of the encroachment until sale of the property showed a clouded title. Support for validating such a conveyance was done to assist the landowner and allow a clear title to proceed.

H.R. 1784 is not similar to previous Congressional validations because this bill uses such validations for commercial redevelopment of the cities of Reno and Tulare. Use of Congressional validation for this purpose runs counter to the intent of Section 9 of the National Trails System Act (16 U.S.C. 1248), which provided for Federal ownership of railroad rights-of-way that are forfeited or abandoned. If Congress wants to amend or discontinue the effects of the National Trails System Act, it should do so by addressing the Act directly.

Further, H.R. 1784 is dissimilar to previous Congressional validations in that it would prospectively validate sales. The legislation would automatically clear titles to all future sales by the Southern Pacific Transportation Company allowing them to sell land within what the cities of Reno and Tulare consider to be redevelopment areas without restriction. This adds an entirely new aspect to the handling of conveyance validations which Congress has approved in the past. Taking such action would give a clear signal to the railroad companies that continued sale of these properties is acceptable to Congress regardless of location. If enacted, this legislation would result in Southern Pacific Transportation Company reaping huge financial gains, and some potential opportunity for the Cities of Reno and Tulare to benefit, while the Federal government relinquishes all its rights without compensation.

In a letter to the Committee regarding this legislation, the Bureau of Land Management (BLM) wrote of the very complex set of issues regarding ownership of title to these lands, which it stated could only be resolved with a complete title search. Further, BLM reported, "The continuing practices of railroad companies to purport to convey valid titles to purchasers and then look to the Congress in order to validate such conveyances is contrary to the intent of the National Trails Systems Act, is contrary to the spirit of the acts which granted rights-of-way for railroad purposes only, and is inconsistent with the notion that the American people should realize fair market value for interests in publicly-owned land."

H.R. 1784 as introduced may also create a situation where the federal government may be directly taking private property. The main purpose of the bill is to validate property claims where there is a cloud on the title. The cloud results from the "reversionary" interests of the U.S. government and third parties—that is, a right to have the property revert to others when the land ceases to be used for railroad purposes. The right is generally held by the federal government for lands granted to the railroads from the public domain. However, the provisions of a 1922 law and patents to mining companies under the 1872 Mining Law have created a number

of situations where private landowners hold the reversionary interest.

In other words, the purpose of the bill is to extinguish property rights that interfere with the title granted Southern Pacific Transportation Company. Extinguishing those rights if they are owned by private parties, is a straightforward taking of private property. The property owners whose rights were extinguished would have a clear claim for reimbursement from the Treasury under the Fifth Amendment.

In order to address this takings problem, Rep. George Miller offered an amendment which was adopted during full Committee markup of the bill. Mr. Miller's amendment would require Southern Pacific Transportation Company to pay fair market value to the U.S. Treasury if it is shown that any conveyance by the company validated under this Act resulted in a private property taking under the Fifth Amendment of the U.S. Constitution.

During Committee consideration of the bill, Rep. Neil Abercrombie (D-HI) raised a concern relating to the specific language in H.R. 1784 as it relates to reservation of federal mineral rights. Mr. Abercrombie, as ranking Democrat on the Energy and Mineral Resources Subcommittee, correctly noted that the language in the bill as introduced and as in the Hansen substitute does not conform with prior laws. In the past, with withdrawals from the mining laws, Congress has most commonly stated that the lands in question are no longer subject to appropriation from such law, and normally Congress has made this withdrawal subject to valid existing rights. With respect to the mineral leasing laws, the withdrawal is often stated as the lands are no longer subject to disposition or the operation of such laws. [See for example sec. 9(a)(iii) of the Wild and Scenic Rivers Act of sec. 4(d)(3) of the Wilderness Act].

At other times, Congress has phrased withdrawals from the mining laws to state that the lands are no longer subject to entry under the mining laws (there are examples where this term is also used in conjunction with appropriation, i.e., "entry or appropriation under the mining law") or to location (of claims) under the mining laws (there are other examples where this term is used in conjunction with entry, i.e., "entry or location under the mining law").

H.R. 1784 incorrectly makes the "minerals closed to further entry" which is not consistent with the mining laws since it is the lands that should be closed from entry, not the minerals. In a colloquy with Rep. Hansen during Committee consideration of the bill, Rep. Abercrombie was assured that his concerns relating to the language in the bill as introduced would be resolved as a technical amendment subsequent to Committee consideration and prior to House action. This has not occurred. The Minority requested that the bill, as amended and reported by the Committee, be further modified to replace subsection (c) with language that more closely conforms with prior laws, such as P.L. 99-543. The intent of both provisions is the same: to reserve to the United States all minerals located in the lands in question.

Since the Committee reported the bill, we have heard from landowners in Reno, Nevada regarding potential problems they face. Conveyances made by Southern Pacific have included city streets and sidewalks abutting private property. These property owners

may be left landlocked and at the mercy of the new owners. In at least one instance "air rights" were sold; in another, an underground vault was conveyed which had always been considered part of one owner's building. Property taxes and street assessments over the years have been paid by the private owners or lessees. These concerns should be addressed before this bill moves forward.

GEORGE MILLER.
BRUCE VENTO.
NEIL ABERCROMBIE.
DALE KILDEE.

